

**IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**BB LAND, LLC, a West Virginia company,  
and JB EXPLORATION 1, LLC, a  
West Virginia company,  
Plaintiffs**

**FILED IN OFFICE**

**APR 03 2019**

**JILLIE FARNSWORTH  
CIRCUIT COURT CLERK  
PLEASANTS COUNTY**

**vs.**

**CIVIL CASE NO. 18-C-2**

**Presiding Judge: Michael D. Lorensen**

**Resolution Judge: H. Charles Carl**

**BLACKROCK ENTERPRISES, LLC,  
a West Virginia company, and  
MICHAEL L. BENEDUM,  
Defendants.**

**ORDER MODIFYING PRETRIAL AND TRIAL SCHEDULE**

On the 1<sup>st</sup> day of April, 2019, upon the appearance of the Plaintiffs BB Land, Inc., by counsel Ronda Harvey and Evan Conard, upon the appearance of Defendants Blackrock Enterprises LLC, et al., by Brian R. Swiger, Vivian H. Basdekis and D. Luke Thomas, the court did convene a hearing on the Plaintiff's motion to modify the trial schedule. For good cause shown, and without objection, the motion is granted and the following dates shall govern the rest of the proceedings.

**1. This matter will be tried to a jury on: March 2, 2020 at 9:00 a.m. at the Pleasants County Courthouse, 301 Court Lane, St. Marys, West Virginia. The trial is expected to take five trial days. Continuance motions must be filed and heard prior to the pre-trial conference.**

**2. A first pretrial conference shall be held on: January 31, 2020 at the hour of 10:00 a.m., at the Kanawha County Judicial Building, 111 Court St., 5<sup>th</sup> Floor Courtroom, Charleston, West Virginia. At this first pretrial conference all pending motions, including dispositive motions, shall be resolved. A second pretrial conference shall be conducted on February 28, 2020, at 10:00 a.m., at the Pleasants County Courthouse, 301 Court Lane, St. Marys, West Virginia. All self-represented parties and any lawyer who will participate in the trial must appear at the pretrial conferences. All parties are directed to file with the clerk, exchange and deliver a pretrial memorandum no**

later than seven (7) days before the second pretrial conference. These memoranda must set forth the following:

- |                          |                                                                                                 |
|--------------------------|-------------------------------------------------------------------------------------------------|
| 1. Statement of the Case | 7. List of Pending Motions                                                                      |
| 2. Issues of Fact        | 8. List of Motions <i>in Limine</i>                                                             |
| 3. Issues of Law         | 9. Requested Instructions of Law<br>(Disk as well as hard copy shall be provided to the Court.) |
| 4. Proposed Stipulations | 10. Requested <i>voir dire</i>                                                                  |
| 5. Schedule of Exhibits  |                                                                                                 |
| 6. List of Witnesses     |                                                                                                 |

**Schedule of Exhibits:** The parties shall file and exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel no later than 14 days prior to the second pretrial. Exhibits shall be individually identified and given a unique identifying number. General designations such as "Records from Doctor Jones" are not sufficient. The parties shall mark all exhibits by use of standard exhibit stickers and provide a list to the Court and counsel. Failure to properly identify, mark or provide an exhibit is grounds for exclusion of the exhibit at trial.

**Video Depositions to be used at trial:** If a video deposition is to be used, all parties must be prepared to argue objections at the second pretrial conference. Thereafter, the proponent of the video deposition shall have the video edited to reflect the court's rulings. In addition, the proponent of the video deposition must have a videographer at trial.

**Jury Instructions:** Counsel should be prepared to discuss jury instructions at the second pretrial conference. Late instructions will be considered only if justified by good cause.

**3. Expert disclosures: Party with the Burden of Proof: August 30, 2019.**

Party without the Burden of Proof: October 4, 2019.

- a) Any party desiring to use an expert witness must furnish opposing counsel with a disclosure meeting the requirements of Rule 26(b)(4), Rules of Civil Procedure.
- b) The admissibility of expert testimony is subject to Rule 104(a) of the Rules of Evidence. Objection to the admissibility of expert testimony will be deemed waived if not objected to by a motion *in limine* filed at on or before 30 days and a hearing thereon set with the Court prior to first day of trial.
- c) Co-designation or co-reliance upon experts must also specifically be made in writing on date of Expert Disclosure.

4. **Dispositive Motions:** Any motion filed under Rules 12 or 56 of the West Virginia Rules of Civil Procedure must be filed no later than 60 days prior to the first pretrial conference.

5. **Final witness list filed and exchanged: October 15, 2019.** The witness list will contain the name of each person who will be called to testify at trial. By listing a witness, the lawyer or party identifying the witness certifies to the court that he or she has spoken in person or by telephone with the witness and has confirmed his or her availability for trial. Parties must identify their witnesses by name and business or home address. Any witness not identified by name (such as "representative of the ABC Corporation"), fails to meet the requirements of this order and will be treated as a failure to list the witness. Any witness listed may be called by any party, except retained experts. The unavailability of a witness will not be considered good cause for a continuance unless compliance with this order is shown.

6. **Discovery completion date: November 27, 2019.** All requests must be served and evidence of service filed with the clerk at least 35 days in advance of this date so that all responses may be completed by this date. All trial depositions must be completed at least 30 days before the pretrial.

7. **Motions in limine.** Any motion in limine must be filed at least 14 days before the pretrial and will be ruled on at the pretrial conference.

8. **Mediation.** This matter is referred for mediation. The Plaintiff is to schedule mediation in accordance with Rule 25.01 *et seq.*, West Virginia Trial Court Rules. Mediation must be complete by **December 20, 2019**.

9. **Finality of dates set forth in the order.** The dates set by the court are final and may be modified only upon written motion, a statement as to whether the modification is agreed to or not and by order of the court. Any party requesting a hearing must furnish the court with three dates for which all counsel and self-represented parties are available or set forth what efforts were exercised to obtain such dates.

10. **Dates may be changed only by order of the court.** While agreements among counsel or self-represented parties regarding any matter pertaining to the case are encouraged, these agreements are not binding on the court unless confirmed by order. No additional evidence developed as a result of deviations from the above schedule will be admissible at trial unless justice requires. Any party seeking a continuance must do so in writing. Calling the court's chambers will not excuse any requirement of this order.

11. The dates set out above do not relieve counsel or parties from timely compliance with discovery requests propounded pursuant to the West Virginia Rules of Civil Procedure.

**12. Sanctions:** In accordance with Rule 16(f), West Virginia Rules of Civil Procedure, the Court may impose the full spectrum of sanctions authorized by the Rule if a party or party's counsel fails to obey this order or other orders of this Court including taxation of costs, including attorney fees, exclusion of evidence, dismissal of claims or defenses and judgment default.

**13. Motions practice.** If your motion requires urgent attention, consult with other counsel and state on the motion whether the relief sought is agreed, contested or what efforts were made to consult with the opposing parties.

**14. Service by e-mail.** The parties agreed that in lieu of paper service by mail of documents required by be served by Rule 5, Rules of Civil Procedure, it shall be sufficient to send a .pdf version by e-mail to parties entitled to service of those motions, notices and other writings filed with the clerk and any discovery required to be served.

The Clerk of the Circuit Court of Pleasants County, West Virginia, is directed to forward an attested copy of this Order to the Business Court Division Central Office at the Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia, 25401; the Resolution Judge, The Honorable H. Charles Carl; all counsel of record; and any self-represented parties.

Enter this 3 day of April, 2019.



Michael D. Lorensen, Judge  
Business Court Division

I hereby certify that the annexed  
instrument is a true and correct copy  
of the original on file in my office.  
Attest: Millie Farnsworth, Circuit Clerk  
Pleasants County of West Virginia

